

1 **HAROLD M. JAFFE, ESQ.**

2 CASB #57397  
3 3521 Grand Avenue  
4 Oakland, CA 94610  
5 Tel: (510) 452-2610  
6 Fax: (510) 452-9125

7 Attorney for Defendants JOHN SRAMEK and BERNADETTE SRAMEK, individually and  
8 as Trustees of the John S. Sramek, Jr. and Bernadette D. Sramek Revocable Living Trust  
9 and Harold M. Jaffe, In Pro Per

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 ALISE MALIKYAR,

CASE NO. C07-03533 WHA

13 Plaintiff,

**DECLARATION OF HAROLD M. JAFFE IN  
SUPPORT OF OPPOSITION TO  
PLAINTIFF'S EX PARTE MOTION AND  
[PROPOSED] ORDER CHANGING TIME  
FOR PLAINTIFF TO AMEND COMPLAINT**

14 vs.

15 JOHN SRAMEK, BERNADETTE  
16 \*SRAMEK, HAROLD M. JAFFE, John S.  
17 Sramek, Jr. and Bernadette D. Sramek  
18 Revocable Living Trust, and DOES 1 -  
19 100,

CTRM: 9 - Hon. William Alsup

20 Defendants.

21 I, HAROLD M. JAFFE, declare:

22 1. I am an attorney at law duly licensed to practice in all courts of the State of  
23 California and am attorney of record for defendants, JOHN SRAMEK ("J. SRAMEK"),  
24 BERNADETTE SRAMEK ("B. SRAMEK"), HAROLD M. JAFFE ("JAFFE"), in pro se, and  
25 John S. Sramek, Jr. and Bernadette D. Sramek Revocable Living Trust ("the SRAMEK  
26 TRUST") (or hereinafter collectively referred to as "defendants"), herein.

27 2. The matters stated herein are within my own personal knowledge and if  
28 called as a witness I could and would competently testify thereto. Your declarant is making  
this declaration in support of defendants' opposition to plaintiff, ALISE MALIKYAR  
("MALIKYAR")'s ex parte motion and [proposed] order changing time for plaintiff to amend  
complaint.

4           4.       On December 27, 2007, at approximately 3:09 p.m., your declarant sent a  
5 letter to MALIKYAR in response to her December 20, 2007 fax, a true and correct copy of  
6 which is attached hereto as **Exhibit B**.

7           5.       On December 27, 2007, at approximately 5:04 p.m., MALIKYAR sent an  
8 email to your declarant, a true and correct copy of which is attached hereto as **Exhibit C**.

9           6.       On December 28, 2007, at approximately 1:24 p.m. (even though dated  
10       December 27, 2007), MALIKYAR sent another fax requesting that your declarant sign the  
11       Stipulation sent on December 20, 2007. A true and correct copy of MALIKYAR's  
12       December 28, 2007 fax is attached hereto as **Exhibit D**.

13           7.       On December 28, 2007, at approximately 11:20 a.m., your declarant faxed  
14       and emailed an additional response letter to MALIKYAR, a true and correct copy of which  
15       is attached hereto as **Exhibit E**.

16           8.       Contrary to paragraph 6 of MALIKYAR's declaration, the requested four  
17 month time extension would have substantial effect on the schedule of this case, because  
18 any motions for summary judgment are scheduled to be filed no later than June 26, 2008,  
19 and the requested enlargement of time goes to May 7, 2008. Therefore, should the Court  
20 grant MALIKYAR any additional time to file an amended complaint, said extension should  
21 be conditioned on all other deadlines/hearings be continued for the same amount of time.

22 I declare under penalty of perjury under the laws of the United States, that the  
23 foregoing is true and correct and this declaration is executed on January 3, 2008, at  
24 Oakland, California.

*Harold M. Jaffe*  
HAROLD M. JAFFE

P.O. Box 1386  
Lafayette, CA 94549  
925 899-9890  
fax (407) 209-2126

*Alise Malikyar*

# Fax

To: *Harold Jaffe*

From: *Alise Malikyar*

Fax: 510 452-9125

Pages:

Phone:

Date: 12/20/2007

Re: Stipulation

CC:

☐ Urgent    ☐ For Review    ☐ Please Comment    ☐ Please Reply    ☐ Please Recycle

Please get right back to me on this.

EXHIBIT *A*

1 Alise Malikyar  
2 PO Box 1386  
3 Lafayette, CA 94549  
4 Fax: (407) 209-2126

5 UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
7 SAN FRANCISCO DIVISION

8  
9 ALISE MALIKYAR,

10  
11 Plaintiff,

12 v.

13 JOHN SRAMEK, et al.,

14 Defendants.  
15

Civil Case No.: 07-03533 WHA

STIPULATION AND [PROPOSED] ORDER  
CONTINUING TIME FOR PLAINTIFF TO  
AMEND COMPLAINT

16 FACTS AND PROCEDURAL BACKGROUND IN SUPPORT OF STIPULATION

17 On November 7, 2007, this court signed an order granting Defendant's Motion for Summary  
18 Judgment for Failing to Name an Indispensable Party—Plaintiff Malikyar's husband's Robert  
19 Jacobsen's Bankruptcy Trustee. This court stated that because "the status of Jacobsen's  
20 bankruptcy petition is in flux....Malikyar will be granted leave to amend to name any  
21 indispensable parties, but she should not do this until after the bankruptcy court issues an order  
22 on these motions...Plaintiff will be granted leave to amend to add indispensable parties, if any,  
23 after an order issues in her husband, Robert Jacobsen's bankruptcy petition. This should be done  
24 no later than MONDAY, JANUARY 7, 2008."

25 On December 5, 2007, the Bankruptcy Court for the Eastern District of Texas signed an  
26 order granting the Chapter 13 Trustee's petition to convert Jacobsen's case to Chapter 7 and  
27 denying Jacobsen's motion to dismiss voluntarily his Chapter 13 case.

28 On December 14, 2007, Robert Jacobsen filed a MOTION FOR RE-HEARING OF  
29 MEMORANDUM OPINION AND ORDER GRANTING CHAPTER 13 TRUSTEE'S  
30 MOTION TO CONVERT CASE TO CHAPTER 7 AND DENYING DEBTOR'S MOTION TO

1 VOLUNTARILY DISMISS CHAPTER 13 CASE. On December 18, 2007, Jacobsen amended  
2 that notice for technical reasons. No hearing date has been set on that motion. A true and  
3 correct copy of the relevant portions of the docket in that case is attached to this stipulation as  
4 Exhibit 1.

5 Because the status of the bankruptcy litigation in Texas is still in flux, the parties jointly  
6 request and stipulate that date for Plaintiff to file an amended complaint be continued 90 days to  
7 April 7, 2008, and that the court's order of November 7, 2007 be modified to reflect this change.

8  
9 SO STIPULATED:

10  
11 Date:

  
Alise Malikyar  
Plaintiff In Pro Per

12  
13  
14 Date:

\_\_\_\_\_  
Harold Jaffe  
Attorney for Defendants

15  
16  
17 GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED:

18 The request for a continuance to file an amended complaint is GRANTED. Plaintiff should  
19 file an amended complaint no later than April 7, 2008. The court's order of November 7, 2007 is  
20 modified to reflect this change..

21  
22 Date: \_\_\_\_\_

\_\_\_\_\_  
WILLIAM H. ALSUP  
UNITED STATES DISTRICT COURT JUDGE

**United States Bankruptcy Court  
Eastern District of Texas (Sherman)  
Bankruptcy Petition #: 07-41092**

*Assigned to:* Honorable Brenda T. Rhoades  
Chapter 7  
Previous chapter 13  
Voluntary  
No asset

*Date Filed:* 05/25/2007  
*Date Converted:*  
12/05/2007

***Debtor***

**Robert Edwin Jacobsen**  
101 CN Freenville Rd.  
No. 259  
Allen, TX 75002  
SSN: xxx-xx-2723

represented by **William Paul Rossini**

Rossini & Wagner PC  
1201 Main Street  
Suite 2470  
Dallas, TX 75202  
(214) 979-7321  
Fax : (214) 979-7301  
Email:  
williamp@rossiniwagner.com

***Trustee***

**Janna L. Countryman**  
P. O. Box 941166  
Plano, TX 75094-1166  
(972) 943-2580  
*TERMINATED: 12/05/2007*

***Trustee***

**Christopher Moser**  
2001 Bryan Street, Suite 1800  
Dallas, TX 75201  
(214) 880-1805

represented by **Larry A. Levick**

Singer & Levick, P.C.  
16200 Addison Rd.  
Suite 140  
Addison, TX 75001  
(972) 380-5533  
Fax : (972) 380-5748  
Email:  
levick@singerlevick.com

***U.S. Trustee***

**US Trustee**  
Office of the U.S. Trustee  
110 N. College Ave.  
Suite 300  
Tyler, TX 75702  
(903) 590-1450

represented by **Marcus Salitore**

US Trustee Office  
110 N. College Ave., Room  
300  
Tyler, TX 75702  
903-590-1450  
Email:

12/12/2007	<u>90</u>	Request for Notices Filed by WELLS FARGO BANK (Rogers, Dustin) (Entered: 12/12/2007)
12/12/2007	<u>91</u>	Certificate Of Mailing (RE: related document(s) <u>87</u> Notice of Transfer of Claim in the amount of \$21958.86 Claim Number 9 Filed by eCAST Settlement Corporation (Becket, Alane) filed by Creditor eCAST Settlement Corporation). Service Date 12/12/2007. (Admin.) (Entered: 12/13/2007)
12/14/2007	<u>92</u>	Motion to Reconsider Memorandum Opinion and Order Granting Chapter 13 Trustee's Motion to Convert Case to Chapter 7 and Denying Debtor's Motion to Voluntarily Dismiss Chapter 13 Case Filed by Robert Edwin Jacobsen ).(Attachments: # <u>1</u> Proposed Order) (RE: related document(s) <u>86</u> Order Converting Case to Chapter 7,, ). (Rossini, William) Additional attachment(s) added on 12/17/2007 (bl, ). Modified on 12/17/2007 (bl, (Entered: 12/14/2007)
12/18/2007	<u>93</u>	Amended Motion to Reconsider Memorandum Opinion and Order Granting Chapter 13 Trustee's Motion to Convert Case to Chapter 7 and Denying Debtor's Motion to Voluntarily Dismiss Chapter 13 Case Filed by Robert Edwin Jacobsen (RE: related document(s) <u>92</u> Motion to Reconsider Memorandum Opinion and Order Granting Chapter 13 Trustee's Motion to Convert Case to Chapter 7 and Denying Debtor's Motion to Voluntarily Dismiss Chapter 13 Case Filed by Robert Edwin Jacobsen ).(Attachments: # <u>1</u> Proposed Order) (RE: related document(s) <u>86</u> Order Converting Case to Chapter 7,, ). (Rossini, William) Additional attachment(s) added on 12/17/2007 (bl, ). Modified on 12/17/2007 (bl, (Entered: 12/18/2007)
12/19/2007	<u>94</u>	Application to Serve as Attorney for Trustee Filed by Christopher Moser (Attachments: # <u>1</u> Exhibit A# <u>2</u> Proposed Order) (Levick, Larry) (Entered: 12/19/2007)

**HAROLD M. JAFFE**

**ATTORNEY AT LAW  
3521 GRAND AVENUE  
OAKLAND, CA 94610**

**Telephone: (510) 452-2610 ~ Facsimile: (510) 452-9125**

**email: jaffe510@aol.com**

**December 27, 2007**

**VIA FACSIMILE**

Alise Malikyar  
P.O. Box 1386  
Lafayette, CA 94559

**Re: Malikyar v. Srameks, et al.  
USDC for the Northern District of Calif., Case No. C07-03533**

Dear Ms. Malikyar:

This will respond to your fax sent at approximately 11:30 p.m., on December 20, 2007, which contained a proposed Stipulation and Proposed Order to continue the time to file an amended complaint from January 7, 2008, until April 7, 2008.

In that regard, I draw your attention to Judge Alsup's Order (1) Granting Defendants' Motion for Summary Judgment; (2) Denying as Moot Plaintiff's Motion for Leave to Amend and (3) Vacating Hearing on Separate Motion, filed on November 8, 2007, which states at page 6, lines 1-2, "Since she [Malikyar] does not have standing on her own to sue, defendants' motion is Granted." After so ruling, the Court granted you leave to amend to add indispensable parties, and pointed out that "the status of Jacobsen's bankruptcy petition is in flux." (11/08/07 Order, p. 6, lines 5-6).

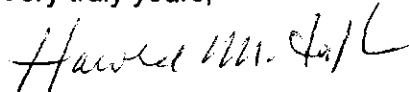
On December 5, 2007, the Court in Mr. Jacobsen's bankruptcy, entered an order converting the case from a Chapter 13 to a Chapter 7, and appointed Christopher Moser, as bankruptcy trustee.

Judge Alsup's Order filed November 8, 2007, states that the plaintiff's claim in this case is "presumptively community property. Thus it is presumptively the property of Jacobsen's bankruptcy estate." (11/08/07 Order, p. 5, lines 16-17).

Upon the entry of the Bankruptcy Court's order appointing a trustee in Mr. Jacobsen's bankruptcy on December 5, 2007, any causes of action against other parties, passed to the trustee. See Cloud v. Northrop, Grumman Corp., (1998) 67 Cal.App.4th 995, 1001, 79 Cal.Rptr.2d 544 [Cloud]; see Olick v. Parker & Parsely Petroleum Co., 145 F.3d 513, 515 (2<sup>nd</sup> Cir. 1998).

Since the trustee retains control of the debtor's property, I do not believe that the proposed Stipulation can be executed absent the signature of the trustee, whether acting himself or through his court appointed counsel.

Very truly yours,



HAROLD M. JAFFE

HMJ:glb

cc: Clients (Via email)

**EXHIBIT B**



\* \* \* COMMUNICATION RESULT REPORT ( DEC. 27, 2007 3:09PM ) \* \* \*

FAX HEADER: LAW OFFICES

TRANSMITTED/STORED : DEC. 27, 2007 3:08PM

FILE MODE	OPTION	ADDRESS	RESULT	PAGE
248	MEMORY TX	14072092126	OK	2/2

REASON FOR ERROR  
E-1) HANG UP OR LINE FAIL  
E-3) NO ANSWER

E-2) BUSY  
E-4) NO FACSIMILE CONNECTION

**HAROLD M. JAFFE**

Attorney at Law

3521 Grand Avenue

Oakland, California 94610

Telephone: (510) 452-2610 Facsimile: (510) 452-9125

E-MAIL: jaffe510@aol.com

**TO:** Alise Malikyar  
**FIRM:**  
**FAX NO:** (407) 209-2126  
**TEL NO:** (925) 899-9890

**FROM:** Gail Smith, Paralegal  
**FAX NO:** (510) 452-9125  
**TEL NO:** (510) 452-2610

**DATE:** December 27, 2007

**RE:** Malikyar v. Srameks, et al.  
USDC for the Northern District of Calif., Case No. C07-03533

**ENCL(S):** See attached.

**MESSAGE:**

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND DISCARD THE ORIGINAL MESSAGE. THANK YOU.

ORIGINAL BY MAIL Yes XX No  
NO. OF PAGES 2 INCLUDING THIS COVER SHEET  
IF THIS TRANSMISSION WAS INCOMPLETE OR UNREADABLE  
PLEASE CALL BEVERLY AT (510) 452-2610

Subj: **STIPULATION CASE NO. 3:07-cv-03533-WHA**  
Date: 12/27/2007 5:04:23 PM Pacific Standard Time  
From: Haena2  
To: JAFFE510

Dear Mr. Jaffe:

Is it your intention to agree to the stipulation faxed to you before Christmas?

Alise Malikyar

See AOL's top rated recipes and easy ways to stay in shape for winter.

**EXHIBIT** 



P.O. Box 1386  
Lafayette, CA 94549  
925 899-9890  
fax (407) 209-2126

*Alise Malikyar*

# Fax

To: *Harold Jaffe*

From: *Alise Malikyar*

Fax: 510 452-9125

Pages:

Phone:

Date: 12/27/2007

Re: Stipulation

CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Before Christmas I sent a stipulation and draft order for your signature. Please advise me in immediately in writing whether you intend to sign that stipulation, as I must serve and file a motion if you cannot stipulate to this reasonable request for an extension of time.

Alise Malikyar

EXHIBIT *D*

**HAROLD M. JAFFE**

**ATTORNEY AT LAW**

**3521 GRAND AVENUE**

**OAKLAND, CA 94610**

**Telephone: (510) 452-2610\*Facsimile: (510) 452-9125**

**email: jaffe510@aol.com**

**December 28, 2007**

**VIA EMAIL AND FACSIMILE**

Alise Malikyar  
P.O. Box 1386  
Lafayette, CA 94559

**Re: Malikyar v. Srameks, et al.  
USDC for the Northern District of Calif., Case No. C07-03533**

Dear Ms. Malikyar:

Your email sent December 27, 2007, at approximately 5:23 p.m., is hereby acknowledged. Please be advised that a detailed response concerning the Stipulation was faxed to you on December 27, 2007, at 3:08 p.m., and I enclose herewith another copy for your convenience.

Very truly yours,



HAROLD M. JAFFE

HMJ:glb

Encls.

cc: Clients (Via email; w/encls.)

**EXHIBIT E**

**HAROLD M. JAFFE**

ATTORNEY AT LAW  
3521 GRAND AVENUE  
OAKLAND, CA 94610

Telephone: (510) 452-2610 ~ Facsimile: (510) 452-9125

email: [jaffe510@aol.com](mailto:jaffe510@aol.com)

December 27, 2007

**VIA FACSIMILE**

Alise Malikyar  
P.O. Box 1386  
Lafayette, CA 94559

Re: **Malikyar v. Srameks, et al.**  
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Since the trustee retains control of the debtor's property, I do not believe that the proposed Stipulation can be executed absent the signature of the trustee, whether acting himself or through his court appointed counsel.

Very truly yours,



HAROLD M. JAFFE

HMJ:glb

cc: Clients (Via email)

Subj: **Malikyar v. Sramek**  
Date: 12/28/2007 11:20:48 A.M. Pacific Standard Time  
From: GailSmith510  
To: Haena2  
CC: JAFFE510  
BCC: john\_sramek@hotmail.com

Ms. Malikyar:

Letter to you from Harold of this date. If you have any problem downloading the attachments, please call immediately. Also, please be advised that the enclosed is being faxed to you as well.

Gail Smith  
=====

Gail Smith, Paralegal for the  
Law Offices of Harold M. Jaffe  
3521 Grand Avenue  
Oakland, CA 94610  
gailsmith510@aol.com  
T: (510) 452-2610  
F: (510) 452-9125

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\* \* \* COMMUNICATION RESULT REPORT ( DEC. 28. 2007 11:19AM ) \* \* \*

FAX HEADER: LAW OFFICES

TRANSMITTED/STORED : DEC. 28. 2007 11:18AM  
FILE MODE OPTION

ADDRESS

RESULT

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259 MEMORY TX

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OK

3/3

REASON FOR ERROR  
E-1) HANG UP OR LINE FAIL  
E-3) NO ANSWERE-2) BUSY  
E-4) NO FACSIMILE CONNECTION**HAROLD M. JAFFE**

Attorney at Law

3521 Grand Avenue

Oakland, California 94610

Telephone: (510) 452-2610 Facsimile: (510) 452-9125

E-MAIL: jaffe510@aol.com

**TO:** Alise Malikyar**FIRM:****FAX NO:** (407) 209-2126**TEL NO:** (925) 899-9890**FROM:** Gail Smith, Paralegal**FAX NO:** (510) 452-9125**TEL NO:** (510) 452-2610**DATE:** December 28, 2007**RE:** Malikyar v. Srameks, et al.

USDC for the Northern District of Calif., Case No. C07-03533

**ENCL(S):** See attached.**MESSAGE:**

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ORIGINAL BY MAIL Yes XX No  
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